



Arbitration Award

Case Number: NWRB1190-24
Commissioner: Mashooda Patel
Date of Award: 2 February 2025

In the **ARBITRATION** between

John William Metene

(Union/Applicant)

and

ChromTech Holdings (Pty) Ltd

(Respondent)

APPROVED

PARTICULARS OF PROCEEDINGS AND REPRESENTATION

1. The Arbitration hearing convened at the offices of the CCMA in Rustenburg on the 29th October 2024 and concluded on the 20th January 2025.
2. The Applicant was present and unrepresented. The Respondent was represented by Mr. Victor De Kock, an Employers representative from the AHL.
3. The Respondent submitted a bundle of documents marked as Bundle "A" (25 pages) and Video Evidence. The Applicant submitted a bundle marked as Bundle "B" (18 pages). Neither party objected to the documents handed in.
4. The process of arbitration was explained to the Applicant and confirmed that he understands the process of arbitration and would only require the services of a Setswana interpreter if and when needed.
5. The proceedings were digitally recorded.

ISSUE IN DISPUTE

6. I must decide whether the dismissal of the applicant was substantively fair. Should I find any unfairness; the applicant seeks Retrospective Re-instatement.

BACKGROUND TO THE DISPUTE

7. The Applicant commenced employment on the 18th July 2023 and held the position of an Acting Foreman at a salary of R49 631.44 per month.
8. The Applicant was found guilty for Reporting to work under the influence of alcohol. The Applicant was subsequently charged and dismissed on the 3rd April 2024.
9. The following aspects were placed in dispute in respect of substantive fairness:
 - Contravention of the rule;
 - The appropriateness of the sanction.

SUMMARY OF THE EVIDENCE AND ARGUMENT

10. In terms of section 138(7) (a) of the LRA, I am required to issue an award with "brief reasons". I do not propose to offer an exhaustive survey of all the evidence and argument led at the arbitration hearing. What follows is a summary of the evidence relevant to my findings only.

RESPONDENT'S VERSION

11. Four witnesses presented evidence on behalf of the Respondent.

12. **Mr. Johan Byleveldt, the Applicant's Supervisor, his** testimony is summarized below:

13. In terms of the video evidence, upon him clocking in on the 12th March 2024 at 6:00am, the Applicant was behind him and was tested at the gate for alcohol use. In terms of the video, the siren went on when the Applicant blew red. The Applicant was retested wherein he blew red for a 2nd time. He (Mr. Johan) continued to the shift and was called by the Applicant and informed that he had tested positive for being under the influence of alcohol and had left site. The Applicant further enquired whether he could return later that day, he informed the Applicant to return but stated that he should have not left site and as they had to conduct another test on him.

14. He stated that as part of policy, once an employee blows positive, security would call the supervisor to come and test the employee with a breathalyzer wherein same would give a reading. The Applicant had left site and they could not conduct the 2nd test on account of same. The Applicant returned to site an hour later and was tested with the breathalyzer which gave him a 0.00% reading, however that was done too late. The Policy states that it must be done within 30 minutes after an employee has blown red.

15. It was stated by him that the Applicant did not go and do a voluntary test as on the footage one can see that he went straight to go and blow. If he had gone to do the voluntary testing, he would have gone into the building which appears on the footage which is where the voluntary testing is conducted.

16. **Mr. Tebogo Majuthela, a Security Officer** testified as follows:

17. He confirmed that the Applicant tested positive on 2-3 occasions when he blew. The Applicant only conducted a voluntary test after he tested positive. The Applicant was sent home as he was outside the premises and not inside.

18. He stated that in the occurrence book, the exact times of the incidents are not written, it was late entries that were made as the entry is made after the incident.

19. **Mr. Sello Mashabela, the HR, his** testimony is summarized as follows:

20. It was stated by him with reference to point 4.2 page 13"B" that the policy indicates that all individuals, employees and non-employees will be tested for alcohol before entering the company premises.

21. It was indicated by him that an employee has an opportunity to volunteer to be tested, if found positive the employee would be sent home and charged for absenteeism without permission. With regards to the Applicant, he tested positive without volunteering as he had blown red. After having blown red, the Applicant left site and a reading could not be taken from him.

22. The witness repeated the testimony of Mr. Byleveldt in terms of the Applicant having tested the 2nd time.

23. He stated that the Applicant only volunteered after having tested positive a number of times.

24. **Mr. Castron Mapindane**, a security guard, his testimony is summarized as follows:

25. On the 12th March 2024, it was indicated by him that when the Applicant came to him and blew red, the Applicant asked him if he could go and do the voluntary testing. He indicated to the Applicant that he could go and do the voluntary testing and sign the voluntary register. He (the witness) indicated that he was not aware of the procedure and did not know that one cannot do a voluntary test after having tested positive.

26. After the Applicant signed the voluntary register, he requested the Applicant to wait. He is not aware of what had transpired thereafter as he left to knock off shift.

APPLICANT'S VERSION

27. The Applicant and one witness testified on his behalf.

28. The Applicant's testimony is summarized below:

29. He stated that he went to the security personal on the date of the incident and indicated that he is not feeling well and would like to take the alcohol test wherein he blew twice and same was red. The personnel stated that due to him requesting to be tested, he should fill in the voluntary register and return home. When he arrived at home, he called Johan who advised him to return to the Site. Upon his arrival, the breathalyzer machine was brought where he was tested and his level was found to be 0.0%.

30. He stated under cross examination that he had blown red on three occasions. He confirmed that his initial clocking time and where he had tested was 6:00am and his retest was done at 6:50am.

31. The Applicant's witness, **Mr. Itumeleng Lekgetho's** testified that he was requested to call Johan, Johan brought the breathalyzer and tested the Applicant wherein he's reading was 0.0%.

Respondent's Argument

32. It was argued on behalf of the Respondent that the Applicant admitted having tested positive before doing the voluntary testing. The Applicant in fact implicated himself. The dismissal was thus substantively and procedurally fair.

33. It was argued on behalf of the Applicant that this was the first time that he did a voluntary test and he was sent home by security and did not return home on his own accord.

ANALYSIS OF THE EVIDENCE AND ARGUMENT

34. Substantive fairness was placed in dispute.

35. Schedule 8 to the Labour Relations Act, the "Code of Good Practice: Dismissal" gives guidance to an arbitrator evaluating the fairness of a dismissal for misconduct. It provides that any person who is determining whether a dismissal for misconduct is unfair should consider:

- (a) Whether or not the employee contravened a rule or standard regulating conduct in the work-place, and
- (b) If such rule or standard was contravened, whether:
 - a. the rule was valid or reasonable
 - b. the employee was aware of the rule
 - c. the rule was consistently applied by the employer
 - d. dismissal was an appropriate sanction for contravention

36. In respect of substantive fairness the following aspects were disputed:

- Contravention of the Rule;
- Appropriateness of the Sanction

37. Was the Rule contravened? Was the Applicant under the influence of alcohol?

38. The Applicant by virtue of his own testimony confirmed that he had tested three times and on all three occasions he had blew red. The Respondent contended that blowing red indicates that a person has tested positive for alcohol abuse/being under the influence of alcohol.

39. The only contention by the Applicant is that he had initially conducted a voluntary test and thus would not be subject to being dismissed. The only question that seeks to be answered is whether the Applicant had conducted himself to a voluntary test on the day?

40. The Respondent's witnesses contended that the Applicant had not conducted himself to a Voluntary test and was rather tested by the security as all people that are entering site are tested. He further referred to the video footage which shows that the Applicant had not gone to the voluntary testing booth which is based in the guard room. The Applicant contended that his name appears in the voluntary attendance register which indicates that he had done a voluntary test. The Respondent's witness explained that he was not aware of the procedure and thus allowed the Applicant to write his name in the attendance register however the Applicant had tested positive during a normal testing and not a voluntary test.

41. In viewing the Applicant's version, there is an underlying indication that the Security Officer was not telling the truth about his (Applicant's) voluntary testing. It must be noted that the Security Officer indicates that the Applicant did not do a Voluntary test; this is corroborated by the video footage where it shows that the Applicant did not go to the Voluntary testing station. I can thus see no reason why the Applicant is attempting to attach blame to the Security Officer. The only probable and more likely reason as to why the Applicant has done so, is that he is fully aware that he had in fact not done a Voluntary test but was rather found to have tested red during a normal testing and in order to cover himself, he had given a false version.

42. I thus find that the Applicant had reported under the influence of alcohol and had thus contravened the rule.

43. In determining whether dismissal was an appropriate sanction, I had regard to the fact that the Applicant was employed for the respondent for a period of a year at the time of dismissal, The Applicant was in a supervisory position and can thus be seen as an example to his subordinates, Reporting for duty on alcohol is a serious offence more so that the Applicant was based within a mining Environment, I thus find that dismissal was an appropriate sanction.

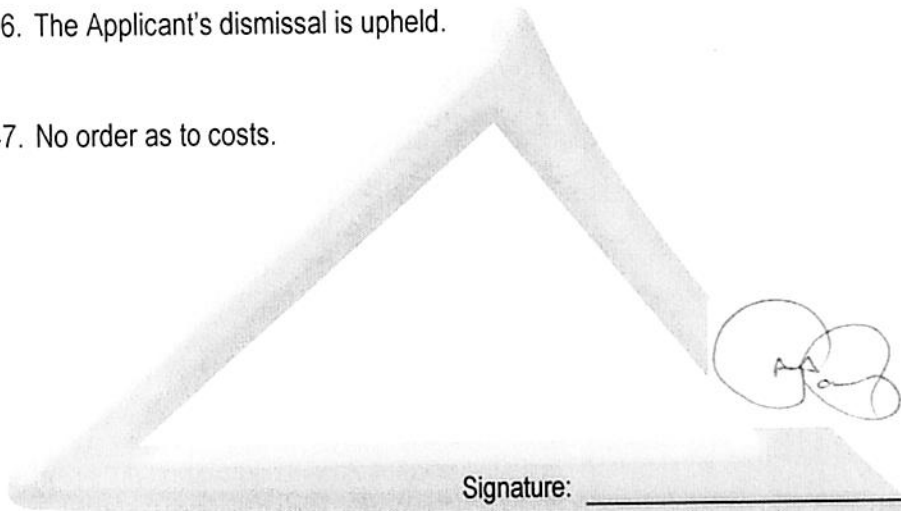
44. I find that the dismissal was substantively fair.

AWARD

45. The dismissal of the Applicant is substantively fair.

46. The Applicant's dismissal is upheld.

47. No order as to costs.



Signature: _____

Commissioner: Mashooda Patel

Sector: Mining

APPROVED